

Chapter 6: Post-ANILCA Accommodation of Commercial Fishing at Glacier Bay

The Humpback Whales Must Eat

Its worldwide population depleted by commercial whaling, the humpback whale (Megaptera novaengliae) was listed as an endangered species in 1970. Three years later the Endangered Species Act (ESA) became law. The fundamental purpose of the ESA is to conserve the ecosystems upon which endangered or threatened species depend. The act requires each federal agency to ensure that its actions, in the words of the National Marine Fisheries Service (NMFS), "do no not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat of such species." 356

In 1979, NMFS estimated that the worldwide population of humpback whales to be about 5,000, of which about 1,000 were in the North Pacific. Some 70 to 100 humpback whales resided in Southeast Alaska during the feeding season, approximately May through October. During the years 1967 through 1977, 20 to 25 utilized Glacier Bay.³⁵⁷ In 1978 there were fewer humpback whales than normal in Glacier Bay, and that number fell further the following year. The decline in humpback whales in Glacier Bay corresponded with an increase in vessel traffic, and the NPS imposed some modest restrictions on vessels: all motorized vessels were asked to remain ¼ mile from any humpback whale, and cruise ships were asked to proceed through designated waters where whales aggregated at 10 knots or less. 358 The restrictions had no discernible effect on the number of humpback whales in Glacier Bay.

In accordance with the provisions of the ESA, the NPS in August 1979 requested a formal consultation with the NMFS. Among the NMFS's recommendations was that the total vessel use in Glacier Bay be restricted to the 1976 level. 359 A 1977 NPS-sponsored study in Glacier Bay by Chuck Jurasz recorded an apparent aversion by humpback whales to two types of vessels: cruise ships and "adventure craft" (small, usually fast boats). The vessels were thought to disturb the critical feeding behavior of the whales. 360 Commercial fish-

ing vessels themselves, particularly trollers—which tended to be small and slow and travel in straight lines—were thought to have little impact on whale behavior.

In March 1980 the NPS published a proposed temporary rule to address the protection of humpback whales in Glacier Bay until more finely-tuned permanent regulations could be promulgated. The rule, which would take effect June 1, 1980, included provisions to:

- limit the number of entries of cruise ships and other vessels over 100 tons gross into Glacier Bay during "whale season" (June 1 to September 1);
- establish designated whale waters (subject to boundary modification) in which all vessels would be required to travel on a straight course at a speed of less than 10 knots, subject to common-sense decisions;
- designate a mid-channel corridor between the entrance of Glacier Bay and the north end of Strawberry Island for all vessels over 16 feet long, except those actively sport or commercial fishing.³⁶¹

As written by the NPS, the proposed rule would have had almost no effect on commercial fishermen. The NPS allowed a 4-week public comment period on its proposal. It received 142 timely comments. The majority recommended more restrictive regulations, including restrictions on small vessels (less than 100 tons gross). The NPS responded by issuing interim regulations that limited entry of small vessels during whale season to the approximate 1976 level. 362 Commercial fishing vessels were excepted because their usage of Glacier Bay had been declining since 1976. 363

Six comments suggested that the commercial harvest of species eaten by humpback whales be eliminated. Humpback whales are filter feeders that can consume more than 800 pounds of food in a day.³⁶⁴ In Glacier Bay their diet ranges from krill and shrimp to small schooling fish, including herring.³⁶⁵ The NPS

^{BBB} During the fall, humpback whales migrate from southeast Alaska mostly to the Hawaiian Islands. Although calves are born during the winter, the whales do not feed until they return to southeast Alaska in the spring.

implemented this suggestion as an interim regulation: no commercial or charter fishing operation would be permitted to actively fish for capelin (*Mallotus*), sandlance (*Ammodytes*), krill (*Euphausiacea*), and, most economically important, shrimp (*Pandalus*). The NPS acknowledged it really didn't understand the relationship between food availability and humpback whales in Glacier Bay; it had funded studies to investigate the subject, but decided that "prudence dictates a conservative approach" to the issue.³⁶⁶

The NPS's experience with the regulations at Glacier Bay during the 1980 whale season indicated a pair of perceived shortcomings related to commercial fishing. The first involved Pacific herring (Clupea spp.), a primary food source for humpback whales. Though they did not frequent Glacier Bay in large numbers, they were known to occur. Prudence dictated that the NPS add Pacific herring to the list of prohibited species. The second issue was bottom trawling. Two bottom trawlers had operated recently in Glacier Bay (If it was in 1979, they may have targeted shrimp; if it was in 1980, they may have targeted bottomfish, such as flounder.). Bottom trawling of any sort is highly damaging to the ocean bottom, and could disrupt habitat important to shrimp and other organisms. Also, depending on the mesh size used, significant numbers of shrimp could be incidentally taken while targeting other species. Again, prudence dictated that bottom trawling be prohibited in Glacier Bay.367

The final (temporary) rule, as well as the proposals regarding herring and bottom trawling, were published in the last days of 1980.³⁶⁸ They would be subject to ongoing review, and a formal review with the goal of making them permanent in 1983.

The NPS had not been entirely forthright in one aspect of its rulemaking. Regarding shrimp, one could make a decent argument that the elimination of trawling for swarming shrimp such as pinks might make a difference to humpback whales. Of concern was the possibility that a trawl fishery for shrimp would develop in Glacier Bay, where the Fish & Wildlife Service had found commercial quantities of shrimp in 1952. Unfortunately, pot shrimpers were lumped in with the trawlers. There were sporadic efforts to pot fish for shrimp in Glacier Bay, but they targeted spot shrimp, that were few in number and tended to be solitary rather than swarming. In no

remotely significant way did this pot fishery have an impact on the diet of humpback whales in Glacier Bay. After the rule had gone into effect, resource management specialist Gary Vequist candidly acknowledged that closing Glacier Bay to pot shrimping was simply something the NPS had wanted to do, and this rulemaking presented a good opportunity to do so.³⁶⁹ As an officer of Friends of Glacier Bay, former Glacier Bay superintendent Bob Howe later took the Service to task over the same issue. Howe wrote:

Whether or not commercial fishing is considered an appropriate Park activity, whale regulations should not be used as a vehicle for limiting it unless whales benefit from the limits. Shooting square with fishermen on this matter will earn the NPS good will that is sorely needed in addressing much thornier management conflicts--such as the issue of wilderness waters.³⁷⁰

Except for this unfortunate episode, the NPS, in its own way, did shoot pretty squarely with fishermen. The ban on pot shrimping, however, can be viewed as a subjective decision by the NPS that was perhaps the first manifestation of the development of a policy to rid Glacier Bay of commercial fishing.

On at least one occasion, a fisherman in Glacier Bay had a more direct effect on the well-being of a humpback whale than by affecting its diet. Sometime in the middle or late 1960s, George and Jessie Dalton were traveling up bay in their small, outboard-powered cabin cruiser to troll for king salmon. In the Beardslee Islands the vessel struck and ran over a humpback whale. The Daltons were thrown forward off their feet but were unhurt, and reported that the whale swam away.³⁷¹ Outboard motors are designed to tilt up if they strike anything, and theirs likely did so. It is unknown whether or not the whale was cut by the propeller.

On another occasion (August 2005) a dead juvenile female killer whale (*Orcinus orca*) was found floating in Glacier Bay near Young Island. The whale was towed ashore and examined. Two types of fishing gear were found dangling from the whale's mouth. One was sport fishing gear of the sort used to troll for salmon.

This gear included a line, small lead weight and a hooked lure called a "hootchie." The other gear was longline snap-on gear that included a circle hook, gangion and snap. This type of gear is used to catch halibut by commercial as well as personal use fishermen. CCC 372 A necropsy led by a veterinarian from the Alaska SeaLife Center collected numerous biological samples, including the stomach. Later analysis revealed that the whale's stomach contained an additional circle hook with gangion and snap, and a salmon hook of the sort used by sport and commercial trollers. The cause of death was determined to be the cumulative effects of septicemia (blood poisoning) that was probably brought on by an ulcerated esophagus and lacerated tongue due to the presence of a circle hook and a sport salmon trolling rig in the mouth and throat, and "bronchopneumonia and necrotising hepatitis."373 The presence of four separate items of fishing gear in this individual whale begs the question of how commonly killer whales take fish caught by fishermen, and how many might be burdened with fishing gear.

There is also the issue of whales becoming entangled in commercial fishing gear. Although actual entanglement has not been documented in commercial fishing gear in Glacier Bay, a humpback whale became entangled in sport crab gear in Bartlett Cove in May 2006, but managed to shed the gear by itself after a couple of days.³⁷⁴ Approximately 71 percent of humpback whales surveyed in northern Southeast Alaska during the years 2003 and 2004 had "unambiguous" scars from entanglement, and 8 percent of the whales observed in Glacier Bay and Icy Strait during the survey acquired new entanglement scars between 2003 and 2004, although the sample size was small. Humpback whales range thousands of miles and the scars persist over many years, so there is no conclusive evidence regarding where or when these entanglements occurred.³⁷⁵

Sea Lions

Steller sea lions (*Eumetopias jubatus*) were first recorded in Glacier Bay in the early 1970s, near the end of a population decline that caused them to be listed under the Endangered Species Act in 1990. Sea lions from both the

threatened eastern stock, and the endangered western stock (defined as inhabiting the area west of Cape Suckling, on the Gulf of Alaska near Cordova) use Glacier Bay waters. DDD 376 In the mid-1990s the sea lion population in Glacier Bay began to increase dramatically. In recent years, several hundred sea lions have been counted on their haulout on South Marble Island at one time. 377

These powerful, quick, and very agile marine carnivores, which can weigh more than a ton, feed on a wide variety of fish. In Southeast Alaska, they commonly follow commercial salmon trollers and attack hooked fish. Fish—particularly king salmon—are usually hard enough to get on a hook in the first place, and having sea lions taking them is very frustrating. Trollers sometimes employ "seal bombs," large weighted firecrackers that explode underwater, to scare sea lions away. Unfortunately, in attempting to snatch a fish from a troller, sometimes a sea lion gets more than it bargained for: it is not uncommon to observe a sea lion with sport and/or commercial trolling gear hanging from its mouth. Sea lions encumbered by fishing gear have been sighted in Glacier Bay, though the unwanted accoutrements may have been acquired elsewhere. Sea lions that have ingested fishing gear often become emaciated and may die.378

Sea lions also are also adept at removing halibut from longline gear, particularly as the gear is being hauled. It seems that the sea lions do not attempt to eat the halibut until it has been pulled free of the hook. Such depredations have been observed in Glacier Bay.³⁷⁹

Memorandum of Understanding with ADF&G

In 1971 Superintendent Bob Howe reported that relations between the NPS and ADF&G "remained cordial," and that exchange of patrol data continued on an informal basis.³⁸⁰ Greg Streveler, Howe's biologist, noted that same year that the NPS had no data on commercial fisheries catch sizes in the monument.³⁸¹

In about 1981, managers at Glacier Bay prepared a report titled "Expansion of Com-

^{CCC} Silver salmon and Pacific halibut are primary prey species of the resident killer whale population in Icy Strait and Glacier Bay.

DDD A California sea lion (Zalophus californianus), which is smaller than a Steller sea lion, has recently been sighted in Glacier Bay.

mercial Fishing in Park Marine Waters." The report noted the NPS's paucity of data on commercial fishing, and cited the need for a closer relationship between appropriate state and federal agencies "to develop a cooperative approach to review and analyze the commercial fishing operations from various points of view."382 It may have had little to do with the concerns expressed at Glacier Bay, but in late 1982 the NPS and ADF&G signed a memorandum of understanding over the fish and wildlife resources in the national park system in Alaska. Shared concern for the resources on lands and waters designated as part of the national park system under ANILCA fostered the cooperation. In the formal agreement both agencies acknowledged their conflicting mandates: ADF&G was charged with managing fish and wildlife by the "sustained-yield principle," while the NPS was charged with the "conservation of healthy populations" of fish and wildlife. As part of the agreement the NPS acknowledged ADF&G as the agency with the primary responsibility for managing fish and wildlife resources in Alaska. ADF&G, in turn, acknowledged the NPS's responsibility to "conserve fish and wildlife and their habitat and regulate human use on Service lands in Alaska, in accordance with the National Park Service Organic Act, ANILCA, and other applicable laws." The agencies agreed to coordinate planning for management of fish and wildlife resources, and to consult with each other when developing policy, legislation, and regulations. Additionally, and most important for Glacier Bay N.P., the agencies agreed "To provide each other upon request fish and wildlife data, information, and recommendations for consideration in the formulation of policies, plans, and management programs regarding fish and wildlife resources on Service lands."383 The NPS by this time was very interested in knowing how much fish was being removed from the Park by commercial fishing interests. Unfortunately, guidelines were never established for the dissemination of information, and little information was shared. Particularly in Glacier Bay proper, this was compounded by the fact that some ADF&G statistical reporting areas did not correspond to the boundaries of Glacier Bay. A state statute that protects the confidentiality of what individual fishermen catch was also

a factor.³⁸⁴ Regarding its policy for statistical reporting areas in Glacier Bay, ADF&G wrote in 1984 that "Natural resource management and human use of fish and wildlife cannot be effectively oriented along political boundaries," and that the department did not intend to re-divide management units to correspond with subdivisions established by the NPS in Glacier Bay N.P.³⁸⁵

Superintendent Mike Tollefson

Mike Tollefson wasn't the first choice of the NPS to replace John Chapman. Chuck Janda, formerly chief ranger at Glacier Bay, was offered the superintendent job, apparently due in part to an endorsement by the commercial fishing community. Janda declined.³⁸⁶

Of all Glacier Bay's superintendents, Tollefson had the most background in and understanding of commercial fishing. He was of a Seattle fishing family. Both his father and mother had worked in canneries in Alaska, and his mother later worked for a commercial fishing supply company. His background also had a conservation component: backpacking trips were a regular family event. And his experience with the NPS at Lake Clark, Mount McKinley, and Katmai national parks gave him an understanding of how the NPS fit into Alaska's social, political, and economic landscape.

When Tollefson arrived at Glacier Bay in June of 1983, there were three pressing administrative issues, each with a commercial fishing component: an ANILCA-mandated general management plan (GMP), on which work had begun in 1981, needed to be completed; the 1980 whale regulations, which required a formal review and update; and the Service's involvement in preparing regulations to terminate commercial fishing in waters designated as wilderness under ANILCA.

ANILCA had designated four areas in Glacier Bay proper—a total of 41,367 acres—as wilderness, among them the Beardslee Islands, which were especially important to the developing local Dungeness crab industry. FFF But it was not until May 1982—fully 18 months after ANILCA became law—that DOI Associate Solicitor J. Roy Spradley issued an opinion that Congress, in crafting ANILCA, clearly intended that commercial fishing be prohibited in Glacier Bay waters designated as wilderness. 387 A countering State of Alaska opinion

EEE A general management plan establishes broad policy direction for the management and administration of a park.

FFF The four areas designated were: Adams Inlet, Beardslee Islands, Rendu Inlet, and Scidmore Bay/Hugh Miller Inlet.

issued by Assistant Attorney General Robert Price did not cite ANILCA, but claimed Glacier Bay's wilderness waters were open to commercial fishing because the NPS had no jurisdiction over the "submerged lands" and the supervening water column in Glacier Bay. (The question of whether the state or federal government held title to submerged lands or jurisdiction over Glacier Bay's waters would recur, and would not be answered definitively for nearly a quarter century. Price recommended that Congress be asked to remove the ANILCA wilderness designations in Glacier Bay. Absent action by Congress, he suggested a suit be filed in the U.S. Supreme Court to establish state ownership of the submerged lands.³⁸⁸

By the time Price had written his opinion, the NPS regulations to close the areas to commercial fishing had been prepared in Washington, DC. They were expected to be released in December 1982.

The impending closure of the wilderness waters of Glacier Bay caused alarm in Southeast Alaska, and people looked mostly to the state for help. But they also had a powerful ally in Washington, DC: James Watt, President Ronald Reagan's pro-development Secretary of the Interior, had established a "good neighbor" policy in Alaska. By his directive, the implementation of ANILCA was "not to create an oppressive federal presence." Watt assured the people of Alaska that they could "continue their traditional activities with a minimum of interference," that in the implementation of ANILCA the state's position on issues would be considered.³⁸⁹ Good neighbor policy notwithstanding, however, James Watt had no legal discretion to allow commercial fishing in the wilderness waters of Glacier Bay. He could bureaucratically slow down the regulatory process, but he could not ultimately thwart it.

In the spring of 1983, the State of Alaska re-weighed its options. It could push for a legislative solution, such as amending the Wilderness Act or ANILCA to allow commercial fishing in Glacier Bay's wilderness waters, but the prospects for success seemed slim. The state was correct: legislation to perpetuate commercial fishing in the wilderness waters of Glacier Bay introduced by Representative Don Young in February 1983 never received even a committee hearing.³⁹⁰ Another option was for the state to take Robert Price's advice and file a claim to Glacier Bay's submerged lands in the U.S. Supreme Court. Such a suit would be both

time-consuming and costly. More important, despite the state's confident public stance, there was substantial doubt that it could succeed. The state chose a third option: to continue negotiations with the DOI and explore avenues for discretionary relief that would allow previously established fishermen to continue fishing in wilderness waters (through "grandfathering"). At the same time, the state would pressure the federal government to comply with all procedural and substantive laws in the rulemaking to slow down the process.³⁹¹

In late July 1983, Norman Gorsuch, Alaska's attorney general, convened a meeting in Juneau to begin discussing the Glacier Bay issue with fishing groups, community representatives, environmental groups and state and federal agencies. Similar meetings would be held over the next 18 months.³⁹²

In late August, Superintendent Tollefson met with representatives of the State of Alaska and commercial fishing and environmental groups to discuss commercial fishing in Glacier Bay, particularly in waters designated as wilderness by ANILCA. Alaska Governor Bill Sheffield sent a message to the group stating that he felt pre-ANILCA use should continue. The general discussion at the meeting focused on the possibilities of grandfathering existing fishermen and changing wilderness boundaries. Grandfathering was thought not to be workable, but a work group was established to explore wilderness boundary changes. A second work group was formed to focus on legal issues and alternatives.³⁹³

In ANILCA, Congress had made the Beardslee Island area wilderness although NPS had not included the area in its formal wilderness recommendation in 1972.³⁹⁴ Unofficially, at least, the NPS was not adverse to the prospect of deleting the Beardslees from wilderness in exchange for designating wilderness elsewhere in Glacier Bay. Muir Inlet was preferred. To do so would require amending ANILCA in what many, particularly national environmental groups, considered an unfavorable political climate. There was fear that amending ANILCA to rectify the Glacier Bay situation might "open Pandora's box" for those who sought to gut the legislation in various other ways.³⁹⁵

The Southeast Alaska Conservation Council (SEACC) and Friends of Glacier Bay (FOGB) were particularly active in the Glacier Bay work group. Representatives of Excursion Inlet Packing Co., Hoonah Cold Storage, and Pelican Cold Storage were involved as well.³⁹⁶ Formed in 1971, SEACC was Southeast Alaska's first regional conservation organization and counted a number of commercial fishermen among its membership. Although the organization's primary interest was forest issues, in 1983 SEACC began to work with other interest groups to craft a regionally acceptable compromise to the Glacier Bay commercial fishing issue. SEACC's involvement was invited by fishermen in large part because its support of a solution the work group might arrive at was seen as necessary to obtaining the support of national environmental groups. Bart Koehler, who represented SEACC at a number of meetings from about 1995 through 1998, looked upon small boat commercial fishermen as "Alaska's version of the small family farmer." 397

FOGB was formed in Gustavus in 1981 to promote the management of Glacier Bay N.P. "in conformity with its original mandate." Former Glacier Bay superintendent Bob Howe was among the founding members. FOGB, with considerable dissension in its ranks, supported commercial fishing in Glacier Bay, providing there were measures to "reduce biological and aesthetic impacts to acceptable levels." No definition of "acceptable" was provided. 399

The unofficial work group met at Bartlett Cove in the fall of 1983. Before the year was out, the group had arrived at the general consensus position that the Beardslee Island area (and Dundas Bay) should be deleted from wilderness in exchange for the designation of Muir Inlet as wilderness. The inlet had virtually no established commercial fishing use except for Tanner crab (which occurred during the winter) and would be an excellent location to study marine succession. As an act of good faith, the NPS was prepared to hold off promulgating a rule that would close wilderness waters to commercial fishing.

In January 1984, Jim Stratton, executive director of SEACC, presented the work group's "idea" to the national environmental groups in Washington, DC. He dryly noted that "by no means was it heartily endorsed." The idea had enough support, however, that the Sierra Club Legal Defense Fund actually drafted legislation based around it, but only to structure further discussions. GGG 400

All was for naught. In reaching their consensus position, the groups had failed to consider the reaction of the cruise ship industry to the possibility that it would be denied access

to Muir Inlet. In late 1984, the powerful industry very quietly used its political muscle to veto the entire proposal. Roughly the same exchange, however, would quickly rise again as an official NPS proposal.

The NPS may have learned some lessons in its failure to promulgate regulations to close Glacier Bay's wilderness waters to commercial fishing: the commercial fishing issue engendered a lot of controversy, the opponents were formidable, and pushing the issue might damage the Park Service's endeavors elsewhere. Also, there were a number of time-consuming administrative and planning projects that needed completion at Glacier Bay and only a limited staff to work on them. Mike Tollefson knew, however, that it was just a matter of time before the commercial fishing issue "got huge." 401

Shortly after President Ronald Reagan entered office, his administration began a government-wide effort to simplify Federal regulations and ease the burden of regulations on the public. A decision was made to comprehensively review and revise the NPS general regulations, which had been last revised in 1966. The goal was to eliminate out-of-date requirements and apply new rules that reflected current public use and management needs. In March 1982, the NPS published a proposed rule in the Federal Register that addressed commercial fishing, but only in fresh water. The proposed rule prohibited "Commercial fishing in fresh waters, except where specifically authorized by Federal Law."402 In the public comment process, one individual pointed out the inconsistency of prohibiting commercial fishing in only fresh water. The NPS agreed with the commenter, and in a 1983 Federal Register preamble to the regulation explained that "all commercial fishing is prohibited unless authorized by Federal statutory law or regulation."403 (emphasis added) As written in the same Federal Register entry and in the Code of Federal Regulations (C.F.R.), however, the regulation, entitled "Fishing," prohibited "Commercial fishing, except where specifically authorized by Federal statutory law."404

The NPS has the authority to make regulations, but statutes are products of Congressional action. Simply put, the NPS interpreted its law and policy in 1983 to prohibit commercial fishing unless specifically authorized

GGG The Sierra Club Legal Defense Fund changed its name to Earthjustice in 1997.

by Congress. It need not have been that way, because the regulation could have been modified by the NPS, subject, of course, to statutory law. Had it wanted to do so, the NPS could have promulgated a rule that prohibited commercial fishing except where specifically authorized by, say, park superintendents. Involving Congress, as the NPS did in the 1983 regulation, was simply raising the barrier.

The question of the applicability of the regulation to Glacier Bay was raised by NPS staff at Glacier Bay, some of whom could on occasion see commercial fishermen at work through their office windows. The legal opinion of Associate Solicitor J. Roy Spradley, a Reagan appointee in the Washington DC Solicitor's Office, in the summer of 1983 likely did not please the more preservation-minded among them.

It was Spradley's opinion that the nonwilderness waters of Glacier Bay were exempted from the rulemaking because in promulgating the regulation it was the intent of the NPS to "avoid prohibiting commercial fishing in areas where such activity has constituted a major use," (such as in Everglades National Park). Although the 1980 NPS Glacier Bay temporary regulations designed to protect humpback whales did not expressly authorize commercial fishing, they did indicate that the activity was sanctioned by the NPS. Under Spradley's "favored analysis," Glacier Bay N.P. was therefore exempted from the 1983 rulemaking. Spradley furthermore advised that a Government effort to prohibit commercial fishing in the non-wilderness waters of Glacier Bay N.P. would be "extremely controversial" and could generate litigation. He advised that commercial fishing in non-wilderness waters should be allowed to continue pending a review of options for "managing" commercial fishing in wilderness waters. 405 John Quinley, later spokesman for the NPS Alaska Region, said in retrospect that closing Glacier Bay to commercial fishing was at that time "not an issue that we were ready to deal with," and "a fight we didn't want to fight."406

This tolerance of commercial fishing was reflected in the general management plan for Glacier Bay N.P. completed in 1984 under Mike Tollefson.⁴⁰⁷ The GMP recognized the "considerable economic importance" of the commercial fisheries in Glacier Bay NP, and stated that

Traditional commercial fishing practices will be allowed through-

out nonwilderness park and preserve waters and will be subject to regulations by the National Park Service (NPS) and Alaska Department of Fish and Game (ADF&G). Commercial fishing in wilderness waters will be prohibited in accordance with ANILCA and the Wilderness Act. 408

According to the NPS, "traditional commercial fishing practices" in Glacier Bay proper the NPS included trolling, long-lining, and pot fishing for crab. 409 The GMP also recommended that the Beardslee Islands and Hugh Miller Inlet be deleted from wilderness designation, while Muir Inlet and Wachusett Inlet be granted such designation. 410 Such an exchange would have benefited particularly Beardslee Island crab fishermen. Because of the ongoing effort to change the status of the Beardslee Islands, the ban on commercial fishing in Glacier Bay's wilderness waters was not enforced for the time being.

Commercial fish harvest statistics are kept by the Alaska Department of Fish & Game (ADF&G). Since the 1982 memorandum of understanding, the NPS had been working with ADF&G to establish Glacier Bay proper as a separate statistical unit for the reporting of commercial fish harvest data. The information would be of value to biologists, but also to those who might have designs to end commercial fishing in the park. ADF&G made no such changes, however, so the NPS threatened to establish a registration and catch reporting system for all commercial fishermen who used Glacier Bay proper. 411 Such a system would have aroused probably more controversy than the NPS was willing to stomach, and the agency never followed through with its threat.

In early 1984, the State of Alaska presented a number of recommendations for how Glacier Bay should be managed to "ensure continuance of traditional uses, while concurrently providing for sound conservation of the various natural resources." The state urged the NPS to accommodate traditional uses, including commercial fishing to the "greatest extent possible," and claimed that diminishing or eliminating commercial fishing from Glacier Bay's wilderness waters would "create a severe impact on the fishing community and the state's ability to manage fisheries stocks." The

state requested that the NPS cooperate with it in the collection, interpretation and dissemination of fisheries information, and it further suggested that NPS and the state cooperate and share resources in research of mutual interest. In what seemed to be an exercise in wishful thinking, the state also requested that the NPS attempt to explain to the public through brochures and other means that "consumptive uses [of Glacier Bay's resources] are compatible with ecosystem management and will be allowed." Another seemingly wishful recommendation was that the NPS construct a harbor and public dock at Bartlett Cove to provide protected moorage for area residents, visitors, tour operators and fishermen.⁴¹²

The formal review of the temporary 1980 whale regulations resulted in few changes, and permanent whale regulations were promulgated before the beginning of the 1985 summer season. Provided that commercial fishing vessel use levels remained at or below their 1976 use level, commercial fishermen were exempted from the permit system that limited the number of vessels that were allowed to enter Glacier Bay during whale season. Some later argued that this provision had also implicitly exempted commercial fishing in Glacier Bay proper's non-wilderness waters from the NPS's 1983 general prohibition on commercial fishing in national parks.



Documenting Glacier Bay's Fisheries: The Taylor report

As well as noting the need for cooperation in commercial fisheries matters among state and federal agencies, an internal 3-page report, "Expansion of Commercial Fishing in Park Marine Waters," written circa 1981, stated that so little was known about the marine ecosystem of Glacier Bay that a variety of research projects—including an evaluation of commercial fishing—was necessary to provide sound management of marine resources. The NPS's interest in commercial fisheries at that time was spurred in part by an ongoing State of Alaska program to develop a bottomfish (pollock, flounder, etc.) industry in Southeast Alaska.

As commercial fishing in Glacier Bay increased, so too did backcountry use, particularly "sea" kayaking. Kayaking in Glacier Bay started to become popular in the mid-1970s, and continues to be a popular recreational use. Most Glacier Bay kayak trips in the early years were professionally guided, but the trend in more recent years has been toward independent touring in rented kayaks. A conflict arose when some who had come to Glacier Bay to experience a peaceful wilderness kayak trip were annoyed by the noise and commotion created by commercial fishing vessels. This was particularly true during the short, intense halibut openings, when numerous boats filled the bay and fishermen worked almost continuously. Loud, raucous music such as was often played on deck was a particular source of irritation, as was the occasional sound of a gun being fired by a fisherman to dispatch a large halibut before it was brought into the boat.NNN

In one instance, probably in 1981, a kayaking guide for Alaska Discovery, the kayak rental and guiding concessioner at Glacier Bay at that time, was camped with his clients in the Beardslee Islands. It was during a halibut opening, and the clients complained of the noise. He explained to the group that the designation of the Beardslees as wilderness under the Alaska National Interest Lands Conservation Act (ANILCA) might end commercial fishing in the islands. Their response was that it could not happen fast enough.⁴³⁵

This conflict between backcountry recreational users and commercial fishermen was a management issue, and the NPS recognized the need to know more about commercial

fishing. 436 There were also increasing feelings that commercial fishing was inappropriate in a national park, and a developing interest in the concept of Glacier Bay as a marine reserve.

Seasonal employee Mike Taylor, whose background in fisheries was limited to his having taken an ichthyology class in college, was charged with doing a preliminary assessment of Glacier Bay N.P.'s fisheries. He began work on the project in 1984, and his report, "The Fisheries of Glacier Bay National Park and Preserve," was completed in May 1985. Taylor mapped the locations of Dungeness crab pots as well as where halibut gear was set, but most of his work involved searching through existing literature and catch data to glean what was relevant to Glacier Bay. Taylor acknowledged early on that because so little was known about Glacier Bay's marine ecosystem, it was difficult to address the ecological impacts of commercial fishing. 437 Nevertheless, he did not refrain from making a value judgment: "The ecological and aesthetic impacts of the [commercial fishing] activity while lacking quantification, are inappropriate," and noted that "Uncertainties regarding the standing and future of commercial fishing activities strain the planning of Park managers and fishermen alike."438

Among Taylor's recommendations were:

- Seek congressional resolution of the status of commercial fishing;
- Close Glacier Bay proper to halibut fishing during visitor season (June through August);
- "Grandfather" Dungeness crab fishermen who fished in Glacier and Dundas bays in 1984;
- Allow no new commercial fisheries to develop; and,
- Develop a quantitative model of the marine ecosystem.

Taylor pointed out the effect the closure of Glacier Bay would have on commercial fishermen:

The experienced fishermen have invested years in learning the waters. If forced to fish elsewhere, they would have to compete with other fishermen already established in those areas. There might be greater

NNN Shooting halibut is not a common practice among experienced commercial fishermen. As one very experienced fishermen told the author: "If you're hauling your gear efficiently, there simply isn't time."

travel costs and reduced operating efficiency on the unfamiliar, perhaps crowded grounds.⁴³⁹

Fishermen and their advocates would echo this accurate analysis constantly once the effort to close Glacier Bay to commercial fishing gained momentum.

Taylor also pointed out what the NPS already knew well from experience:

Significant restriction of existing commercial fishing within the Park would be expected to generate strong objections from local communities, including the Native community of Hoonah, whose traditional home is Glacier Bay. The State of Alaska would defend the fishing interests, in court if necessary, and the State's Congressional delegation would also be a formidable opponent. 440

Perry Report

The commercial fishing effort in Glacier Bay continued to grow to such an extent that just two years after Mike Taylor had completed his report, resource managers thought a more current evaluation of commercial fishing was necessary. Managers were particularly interested in obtaining quantitative data on the commercial fishing effort and catch. In the spring of 1987, the NPS hired marine biologist Anjanette Perry as a seasonal biological technician to put together a comprehensive report on commercial fishing in Glacier Bay N.P. (Perry's husband, Scott Baker, was at the time doing whale research at Glacier Bay.) She began by standardizing reports for monitoring commercial fishing. Backcountry rangers were to record all commercial fishing vessels by name, date, location, size, activity, and home port. Dungeness crab pots were to be counted monthly and their locations mapped, unusual events or circumstances recorded, and rangers were to try to obtain historical and sociological information from fishermen, such as how long they had been fishing in Glacier Bay N.P. and why they preferred to fish there.441

Perry completed her study, "Commercial Fishing in Glacier Bay National Park," later that year. The 45-page report emphasized developments in the fisheries after 1983. It

described the biology of the major commercially harvested finfish and shellfish, reported on commercial fishing activities, including the types of gear used, etc., considered the biological and economic impacts of commercial fishing in the Park, and proposed management actions to insure the health of Glacier Bay NP's marine ecosystem. 442 Perry wrote that the NPS at present had "no inclination to establish a general prohibition of or phasing out of commercial fishing in Glacier Bay." Her report was thought to have potential as a foundation for a Glacier Bay N.P. commercial fisheries management program.

In prefacing her recommendations, Perry noted that there was "no crisis situation yet" because Glacier Bay N.P. was "blessed with abundant resources and low overall use." She added, however, that the lack of a clear management policy was not in the best interest of park managers, fishermen or the public.

Perry was very interested in obtaining quantitative information about Glacier Bay's fisheries. Despite ADF&G's agreement in the 1982 memorandum of understanding to share fisheries information with the NPS, a lack of clear guidelines for what information would be provided, in what form it would be provided, and when it would be provided hampered the NPS's ability to understand the fisheries in Glacier Bay. She compiled a long and probably unrealistic list of information she thought ADF&G should be supplying the NPS on a regular basis. She also reiterated the need for ADF&G to establish Glacier Bay proper as a separate statistical reporting area. (This would not be the last time the request was made.) If this was not feasible, Perry suggested the NPS establish a registration system for all commercial fishermen using Glacier Bay, who would be required to report their catch. This idea had been rejected by the NPS several years earlier as too controversial.

Perry thought commercial fishing should be phased out of wilderness waters through the issuance of non-transferable lifetime access permits (LAPs). Another option was to close wilderness waters to commercial fishing only in the summer.

In concluding her report, Perry cited the need for systematic monitoring and analysis of the development of Glacier Bay's commercial fisheries. With good data in hand, Park management could then rapidly implement policies

to limit resource damage and prevent conflicts with visitors and other Park activities. OOO

Perhaps as a follow-up to Perry's recommendations, in the early summer of 1989 volunteers monitored vessel traffic in the Beardslee Islands. Most of the traffic that year was Dungeness crab vessels, and a non-systematic survey of crab pots determined that there were at least seven vessels fishing.⁴⁴⁵

Nearly a decade would pass before the NPS at Glacier Bay hired a full-time fisheries biologist. Chad Soiseth, who fulfilled that role beginning in 1996, was tasked to obtain commercial fishing effort and harvest information for Glacier Bay N.P. Soiseth had training as an ecologist, and had been working as a seasonal biological technician at Glacier Bay since 1992. A frustrating aspect of his work was the perpetual difficulty of obtaining useful information from ADF&G and other fisheries management agencies. The department had long opposed any efforts to restrict commercial fishing in Glacier Bay, and it was not inclined to provide information that would further the effort. Furthermore, ADF&G was legally constrained by statutory confidentiality requirements that did not allow disclosure of information on activity by three or fewer fishermen in a single statistical area, or the release of fish ticket landing information or annual statistical reports of buyers or processors except to specified agencies. The NPS was not on the list of specified agencies. 446

Biosphere Reserve and World Heritage Site

The International Man and the Biosphere to Program was established by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1970. Its purpose was to protect internationally important areas for research and monitoring, to reduce biodiversity loss, and to enhance environmental sustainability through the establishment of a world-wide network of biosphere reserves. In 1986, UNESCO designated Glacier Bay and Admiralty Island as the Glacier Bay-Admiralty Island Biosphere Reserve. Six years later, in another major action, UNESCO recognized Glacier Bay and three neighboring parks — Wrangell-Saint Elias in the U.S. and Kluane National Park and Tatshenshini-Alsek Provincial Park in British Columbia, Canada—as being of "outstanding value to humanity," and designated the group as a World Heritage Site. As a signatory to the 1972 UNESCO World Heritage Convention, the U.S. recognized its duty to protect the area for future generations. Heritage Tommercial fishing was an issue in the World Heritage Site evaluation process, but the review board determined that this "threat to the integrity" of the site was being addressed. While these designations pointed out its value and raised its profile, Glacier Bay was already protected as a national park. The designations had no direct effect on commercial fishing.

NPS Dock at Bartlett Cove

The dock at Gustavus is a rickety structure that is completely exposed to Icy Strait's west and southwest winds, which are often considerable. Some say that the most dangerous thing one can do with a boat in Gustavus is tie it to the Gustavus float and leave. The wind and tide can quickly conspire to make the float leap and buck so violently that boats have suffered major damage. A few individuals trying to work on the dock in such conditions have gotten seasick. The NPS dock at Bartlett Cove, on the other hand, is a substantial affair in a relatively sheltered location. It is often usable when the Gustavus dock is not. The NPS dock was constructed at taxpayers' expense, and commercial fishermen—hoping to retain or increase their access to it—did not tire of reminding the NPS that they are taxpayers.

Commercial fishermen are allowed to tie to the dock and float during the visitor season, but, as with all types of boats, are subject to time limitations. Park Superintendent Marvin Jensen recalled that at least one fisherman regularly left his boat tied to the dock for more than the allowed time, perhaps just to irritate the NPS people who were working to close Glacier Bay to commercial fishing.

Dock regulations were relaxed during the non-visitor season, but a number of local fishermen wore out their welcome by staying tied to the float for weeks. The NPS eventually established a policy to regulate how long vessels could remain tied to the dock during the non-visitor season.

⁰⁰⁰ In 1990, Anjanette Perry and Mike Taylor co-authored "Commercial Fishing Patterns in Glacier Bay National Park, Alaska," which was published in A. M. Milner and J. D. Wood Jr, editors, Second Conference on Scientific Research in the National Parks. U.S. National Park Service, Glacier Bay National Park & Preserve, AK. The report was fundamentally a distillation of the earlier reports done by Perry and Taylor.

Bears were on occasion unexpected and unwanted visitors on fishing boats at Bartlett Cove. On one occasion, Tom Traibush's *Fat Man*, smelling of fish, was left tied to the dock and a black bear, attracted to the smell, was found rummaging around on the boat and chased off. Another time, a black bear boarded an unoccupied troller tied to the dock and helped itself to salted salmon that were kept in a barrel on deck. And there was the night around 1970 that a black bear boarded a seine boat tied to the dock and poked its head into an open hatch, below which was the head of a soon-to-be startled crewmember.⁴⁴⁹

In about 1985, Glacier Bay Superintendent Mike Tollefson established a policy for use of the Bartlett Cove dock by commercial fishing interests. Fishermen and processors were allowed pretty much unrestricted access to the dock except during the primary visitor season—usually defined as when Glacier Bay Lodge was operating, approximately late May until late September. During the non-visitor season the amount of fisheries product crossing the dock was comparatively small: mostly Dungeness crab and king salmon in October and November, some Tanner Crab during the winter, followed by some halibut in the spring. During the primary visitor season, fishermen and processors were not permitted to move fish across the dock.

A one-year exception to this policy was made for Tom Traibush, who supplied Dungeness crab to Glacier Bay Lodge. In about 1985 or 1986, Tollefson gave Traibush a special use permit to keep a live box attached to the dock and to move up to 40 percent of his total volume across the dock for sale outside the Park. The fee for the permit was \$100. Traibush asked for the permit the following year, but was informed that the NPS "wasn't doing that anymore." Traibush, and later Matt Metcalf, continued to supply Glacier Bay Lodge with crab via the Gustavus dock.

The permit that was issued to Traibush was significant in that it was the second issued by the NPS to a commercial fishing operation at Glacier Bay. The first was for the salmon trap at Point Gustavus in 1952.

Tollefson seemed to enjoy himself at Glacier Bay and got along well in the community. Likely in part because the NPS wasn't pressing the commercial fishing issue, he also got on well with commercial fishermen. Tom

Traibush recalled that the outboard motor on the *Fat Man* once unexpectedly quit while he was fishing in the Beardslee Islands early one morning. Traibush anchored his boat, and a passing boat gave him a ride to Bartlett Cove, where he knocked on the door of the superintendent's residence. Tollefson answered, and Traibush explained his situation and asked to borrow his personal skiff to tow the *Fat Man* back. Without hesitating, Tollefson gave him permission.

Tollefson left Glacier Bay in September 1987. With his departure the NPS's "open door" policy toward commercial fishing began to close. He was succeeded several months later by Marvin Jensen, who would initiate the controversial effort to terminate commercial fishing in Glacier Bay N.P. For the commercial fishing industry, things would never be the same.